

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

May 12, 1997 Hearing Room 357

3:15 P.M. Tapes 115 - 116

MEMBERS PRESENT:

Rep. John Minnis, Chair

Rep. Jo Ann Bowman, Vice-Chair

Rep. Rep. Peter Courtney

Rep. Rep. Floyd Prozanski

Rep. Rep. Lane Shetterly

Rep. Rep. Ron Sunseri

Rep. Rep. Larry Wells

STAFF PRESENT:

Scott Lumsden, Counsel

Nikola Jones, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

HB 2222 - Work Session

SB 936 - Work Session

HB 2240 - Work Session

HB 3668 - Work Session

HB 2717 - Work Session

HB 2712 - Work Session

HB 2168 - Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation

marks reports a speaker's exact words. For complete contents, please refer to the tapes.

Tape/#	Speaker	Comments
Tape 115, A		
003	Chair Minnis	Calls the meeting to order at 3:28 p.m.
<u>OPENS WORK SESSION ON HB 2712</u>		
	Ann Christian	<p>State Court Administrators Office. Explains HB 2712 and submits a proposed amendment on behalf of the State Criminal Justice Advisory Committee. [Exhibit A]</p> <p>>defendant elects to appear by video</p> <p>>compromise - presumption defendant would appear by video unless defendant objects</p>
031	Rep. Bowman	MOTION: Moves to AMEND HB 2712 on page 1, in line 10, delete "appears" and insert "does not object to appearing" as conceptually submitted by the State Criminal Justice Advisory Committee.
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 - Rep. Courtney</p>
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
037	Rep. Bowman	MOTION: Moves HB 2712 to the full committee with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 6-0-1</p> <p>AYE: In a roll call vote, all members present vote Aye.</p> <p>EXCUSED: 1 - Courtney</p>
	Chair Minnis	<p>The motion CARRIES.</p> <p>REP. BOWMAN AND REP. VANLEEUVEN will lead discussion on the floor.</p>
<u>CLOSES WORK SESSION ON HB 2712</u>		
<u>OPENS WORK SESSION ON</u>		

HB 3668		
056	Rep. Bowman	MOTION: Moves to ADOPT HB 3668-1 amendments dated 04/09/97.
059	Scott Lumsden	Committee Counsel. Replies to Chair's question regarding origination of -1 amendments.
065		VOTE: 7-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
068	Rep. Bowman	MOTION: Moves HB 3668 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. BOWMAN AND REP. GARDNER will lead discussion on the floor.
<u>CLOSES WORK SESSION ON HB 3668</u>		
<u>OPENS WORK SESSION ON HB 2168</u>		
086	Rep. Prozanski	Discusses HB 2168-1 amendments.
	Rep. Prozanski	MOTION: Moves to ADOPT HB 2168-1 amendments dated 05/05/97.
105		VOTE: 6-0-1 EXCUSED: 1 - Rep. Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
107	Rep. Prozanski	MOTION: Moves HB 2168 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Courtney
	Chair Minnis	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.

<u>CLOSES WORK SESSION ON HB 2168</u>		
<u>OPENS WORK SESSION ON HB 3717</u>		
119	Judy Uherbelau	Representing House District 52. Reviews her discussions with State Police regarding data system and how it would work with HB 3717. Have concerns and suggests another amendment that would limit use of system.
145	Rep. Bowman	MOTION: Moves to ADOPT HB 3717-1 amendments dated 5/12/97.
	Chair Minnis	Rep. Uherbelau, have you reviewed the -1 amendments?
	Rep. Uherbelau	Yes. Continues.
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
<u>CLOSES WORK SESSION ON HB 3717</u>		
<u>OPENS WORK SESSION ON SB 936</u>		
174	Nikola Jones	Committee Counsel. Calls attention to packet containing: -3 and -5 amendments [Exhibits B & C] and hand-engrossed version of SB 936. [Exhibit D] Reviews amendment changes as contained in Exhibit D.
251	Rep. Shetterly	MOTION: Moves to ADOPT SB 936-3 amendments dated 04/08/97.
		VOTE: 6-1-0 AYE: 6 - Rep. Courtney, Rep. Prozanski, Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis NAY: 1 - Rep. Bowman
	Chair Minnis	The motion Carries.
	Rep.	MOTION: Moves to ADOPT SB 936-5 amendments dated

	Shetterly	04/11/97.
		VOTE: 6-1-0 AYE: 6 - Rep. Courtney, Rep. Prozanski, Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis NAY: 1 - Rep. Bowman
	Chair Minnis	The motion Carries.
267	Rep. Shetterly	MOTION: Moves to AMEND SB 936 on page 1, in line 7, after "relevant," delete "or" and insert "and".
	Rep. Shetterly	Comments for clarification.
285	Chair Minnis	Concerns with conceptual amendment?
	Jones	No.
		VOTE: 7-0
	Chair	Hearing no objection, declares the motion CARRIED.
295	Rep. Prozanski	MOTION: Moves to AMEND SB 936 on page 4, in lines 36d & 36g, change "January 31, 1999" to "July 1, 1999".
		VOTE: 7-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
324	Rep. Prozanski	MOTION: Moves to AMEND SB 936 on page 13, in lines 31, delete "unless" and insert "if". In addition, FURTHER AMEND on line 31 after determines, insert "that the state establishes" and on line 32 delete "not".
349	Rep. Prozanski	Makes it very clear who has the burden for going forward. Continues. >burden of the state to go forward
368	Rep. Shetterly	Questions for clarification regarding testimony from proponents.
372	Rep. Prozanski	Responds.
373	Rep. Shetterly	We discussed intent.
381	Rep. Prozanski	Replies. Yes, but hesitation to putting it out in ink. Continues.
399	Rep. Sunseri	I don't see that placing a burden on the accused. Continues.
	Chair Minnis	Questions for clarification regarding suggested language.

429	Rep. Prozanski	Bottom line - who has the burden of bringing that evidence forward? Continues.
435	Chair Minnis	Continues his comments regarding wording.
450	Rep. Shetterly	Does this all relate to the release hearing?
Tape 116, A		
065	Rep. Shetterly	States he will vote against amendment and gives reasons.
070	Chair Minnis	Language very clear that the state has the burden. Continues.
073	Rep. Shetterly	For the record. Burden of proof is on the state.
075	Rep. Prozanski	Withdraws motion.
079	Rep. Prozanski	Explains additional conceptual amendment. >moves to delete section 37 >provides reasons
095	Chair Minnis	Housekeeping amendments that will be obsolete upon bill's passage.
099	Rep. Prozanski	Responds. Currently law today with challenges out there. Continues.
110	Rep. Shetterly	Asks to have Counsel explain.
113	Jones	Responds. With the passage of this bill along with Measure 40, this bill and Measure 40 control. >those statutes are not needed
120	Rep. Shetterly	Questions for clarification regarding restatement of what is constitutional.
130	Chair Minnis	Responds.
137	Rep. Shetterly	If Measure 40 is struck down, these statutes would be gone and not revived. Continues.
168	Rep. Shetterly	Comments for clarification and makes suggestions as to wording.
181	Chair Minnis	That works. Continues.
183	Rep.	Would you be agreeable to a sunset clause?

	Prozanski	
185	Chair Minnis	One of the issues the court will address. Continues.
194	Tim Sylwester	Chief Criminal Attorney, Appellate Division, Department of Justice. Rep. Prozanski's statement is largely correct. Continues.
226	Rep. Shetterly	MOTION: Moves to AMEND SB 936 on page 21, in line 21, after "repealed," insert "effective July 1, 1999".
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
	Rep. Sunseri	MOTION: Moves SB 936 to the full committee with a DO PASS AS AMENDED recommendation.
	Rep. Prozanski	Comments on concerns.
286	Chair Minnis	If judge sets a higher amount based on their authority, could claim the same level of discrimination.
291	Rep. Bowman	Comments on her concerns. The judge has the authority to set bail. This takes it out of the judge's hands and sets a predetermined amount. Continues.
315	Rep. Prozanski	Discusses possible Section 9 language change.
	Rep. Shetterly	Discusses his concerns with bill.
353	Rep. Bowman	I'm willing to implement Measure 40, but can't support this measure. Gives notice of a possible minority report.
		VOTE: 5-2-0 AYE: 5 - Rep. Courtney, Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis NAY: 2 - Rep. Bowman, Rep. Prozanski
	Chair Minnis	The motion Carries.
<u>CLOSES WORK SESSION ON SB 936</u>		
<u>OPENS WORK SESSION ON</u>		

HB 3717		
388	Judy Uherbelau	Representing House District 52. Reviews discussions of work group.
401	Timothy Travis	Juvenile Rights Projects, Inc. Testifies in support to HB 3717 and submits proposed amendments by work group [Exhibit E] which will replace (9) of the bill. >conversations with State Police, their data base and access to information >legislation will not impact them in any way
Tape 115, B		
026	Rep. Bowman	Restates proposed amendment for the record.
034	Travis	Actually, it would be the counties, the courts, and other agencies.....
038	Rep. Bowman	The rest continues?
040	Travis	All of subsection (9) is stricken and would be replaced by [Exhibit E]
055	Rep. Prozanski	MOTION: Moves to AMEND HB 3717 conceptually as follows: delete "All of subsection 9 (9) and insert wording contained in Exhibit E".
059	Rep. Wells	Questions for clarification.
064	Rep. Uherbelau	Conceptual amendments completely replace present subsection 9 under Section 2.
		VOTE: 6-0 EXCUSED: 2 - Rep. Courtney, Rep. Minnis
	Vice Chair Bowman	Hearing no objection, declares the motion CARRIED.
072	Rep. Prozanski	MOTION: Moves HB 3717 to the full committee with a DO PASS AS AMENDED recommendation.
076	Rep. Sunseri	Question for Rep. Uherbelau regarding concerns of the Board of Realtors.
078	Rep. Uherbelau	No. Explains.
		VOTE: 6-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Courtney
	Chair	The motion CARRIES.

	Minnis	REP. UHERBELAU will lead discussion on the floor.
<u>CLOSES WORK SESSION ON HB 3717</u>		
<u>OPENS WORK SESSION ON HB 2222</u>		
104	Kevin Mannix	<p>Attorney, former State Representative. Testifies in support of HB 2222. Speaks to the -1 amendments: [Exhibit F]</p> <ul style="list-style-type: none"> >strip out all of the provisions that were in the original bill - most of which have been dealt with in other bills except: >still maintain provisions that allow facsimile application for a warrant >issue of prison inmates who throw bodily substances at or on corrections officers
121	Dale Penn	<p>Marion County District Attorney.</p> <p>Testifies in support of HB 2222 and gives reasons for amendments.</p> <ul style="list-style-type: none"> >use of bodily fluids as weapons against correctional officers within institutions >elevate to a felony assault >identifies a 13-month sentence
138	Rep. Bowman	Why the military hair cut?
141	Mannix	Section 5 is the Rep. Jim Welsh amendment to the -1 amendments. Explains.
159	Rep. Bowman	Shares comments.
161	Rep. Wells	Are there any current requirements to hair length?
	Mannix	Not aware of any, maybe only in maximum security institutions. Continues.
167	Rep. Bowman	Is there mandatory minimum sentence in this bill?
170	Mannix	Mandatory maximum length.
172	Rep. Shetterly	Couldn't they impose hair length by Correction Department rules?

179	Al Chandler	Assistant Director, Department of Corrections. Responds. >Not something that needs to be placed into statute. >Is a better way than through statute.
190	Chair Minnis	What is the better way?
191	Chandler	No problem with the way it is presently.
193	Rep. Sunseri	Problems with lice?
194	Chandler	Not aware of any instances.
198	Rep. Bowman	MOTION: Moves to ADOPT HB 2222-1 amendments dated 05/06/97 and that the AMENDMENTS be FURTHER AMENDED on page 3, line 2, by deleting "Section 5 in its entirety".
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
	Rep. Bowman	MOTION: Moves HB 2222 to the full committee with a DO PASS AS AMENDED recommendation.
	Rep. Prozanski	Why do we need this measure?
217	Chair Minnis	Couple of difficulties. Continues.
234	Penn	The Senate Bills would only apply to crimes that occur from the date of passage forward. Continues.
253	Rep. Prozanski	Questions for clarification.
257	Penn	Replies.
319	Rep. Bowman	Questions for clarification regarding physical assault versus urine & feces.
325	Penn	This is an aggravation of that particular conduct.
327	Rep. Bowman	Continues her questioning.
332	Penn	Misdemeanor conduct could only be sanctioned in the county jail. Continues.
345	Rep. Wells	You have decided not to pursue assaulting of correctional officers.
354	Penn	Only the issue of the urine and feces throwing is going to be addressed.
360	Rep. Wells	His concerns will not be addressed this session.
365	Penn	Replies. Prosecution did occur for that inmate. Continues.

389	Rep. Bowman	Heard moving testimony about corrections officers being physically assaulted. Continues.
415	Chair Minnis	Could contact the unions. Continues.
427	Rep. Shetterly	Shares concerns over the minimum mandatory element.
437	Chair Minnis	Comments for clarification.
451	Rep. Sunseri	Shares comments over not providing protection to the correctional officers.
		<p>VOTE: 4-2-1</p> <p>AYE: 4 - Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis</p> <p>NAY: 2 - Rep. Bowman, Rep. Prozanski</p> <p>EXCUSED: 1 - Rep. Courtney</p>
	Chair Minnis	<p>The motion Carries.</p> <p>CHAIR MINNIS will lead discussion on the floor.</p>
<u>CLOSES WORK SESSION ON HB 2222</u>		
Tape 116, B		
<u>OPENS WORK SESSION ON HB 2240</u>		
053	Sarah Hackett	League of Oregon Cities. Submits written testimony in opposition of HB 2240. [Exhibit G]
067	Debra Hogan	<p>Records Manager, Portland Police Bureau. Testifies in opposition to HB 2240. Office handles records expungement and record sealing.</p> <p>>strongly opposes legislation - explains</p> <p>>negative results - not one positive</p> <p>>expensive procedure</p>
115	Fred E. Avera	District Attorney, Polk County. Represents Oregon District Attorneys Association. Submits written testimony in support of HB 2240 along with proposed amendments. [Exhibits H & I]
		Oregon Criminal Defense Lawyers Association. Testifies in support of HB 2240. Seeking a fairly modest change to the expunction law.

165	Ingrid Swenson	>arrests for misdemeanor charges and traffic offenses >Chair's amendments appropriate >hearing is not appropriate
191	Rep. Shetterly	Reviews cycle of HB 2240 through committee chain
194	Swenson	Continues her comments regarding costs.
	Chair Minnis	Agrees with -3 amendments.
210	Rep. Shetterly	States his concern regarding costs.
	Chair Minnis	Can cities and counties already charge a fee?
224	Brad Swank	Management/Legal Analyst, Office of the State Court Administrator. States that there are other agencies that incur costs for expunction of records. >if considering an amendment, least expensive way would be to pay directly to the agency
<u>CLOSES WORK SESSION ON HB 2240</u>		
	Chair Minnis	Adjourns the meeting at 5:12 p.m.

Transcribed by, Reviewed by,

Julie Clemente for

Lauri A. Smith, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Proposed HB 2712 Amendments - Ann Christian - 2 pgs

B - Proposed SB 936-A3 Amendments - Staff - 1 pg

C - Proposed SB 936-A5 Amendments - staff - 1 pg

D - Hand-Engrossed SB 936-3; -5 - Staff - 12 pgs

E - HB 3717 Conceptual Amendments - Tim Travis - 1 pg

F - Proposed HB 2222-1 Amendments - Dale Penn - 3 pgs

G - Testimony in Opposition to SB 2240 - Sarah Hackett - 1 pg

H - Testimony in Support of SB 2240 - Fred Avera - 2 pgs

I - Proposed Amendments to HB 2240-3 - Fred Avera - 1 pg